



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0436]

RIN 1625-AA00

Safety Zone; Three Rivers Regatta/Three River Regatta and
Fireworks, Ohio River, Mile 0.5 to Mile 0.5 on the Allegheny
River and Mile 0.5 on the Monongahela River; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile 0.5 Ohio River up-bound to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River, extending the entire width of the rivers. This action is necessary to ensure public safety due to the inherent hazards associated with launching fireworks from a barge and the explosive nature of the fireworks display. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the

Port (COTP) Pittsburgh or a designated representative.

DATES: This rule is effective and will be enforced with actual notice on July 3, 2015 from 12:00 p.m. to 10:00 p.m., on July 4, 2015 from 12:00 p.m. to 10:00 p.m. and on July 5, 2015 from 12:00 p.m. to 10:00 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0436. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ariana Mohnke, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone (412) 221-0807, e-mail Ariana.L.Mohnke@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

A. Regulatory History and Information

On June 11, 2015, we published a final rule entitled "Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones" in the Federal Register (79 FR 222398). In that rulemaking, the Coast Guard established a permanent safety zone for the annual "Three Rivers Regatta/Three River Regatta and Fireworks", listed in Table no. 1 to 33 CFR 165.801 at Line no. 43. On June 15, 2015, we published a notice of proposed rulemaking (NPRM) entitled "Three Rivers Regatta/Three River Regatta and Fireworks" in the Federal Register. We received no comments on the proposed rule. No public meeting was requested, and none was held.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process with respect to this rule because it is unnecessary and contrary to public interest.

On May 20, 2015, the sponsor notified the Coast Guard that it intended to hold the event on July 3-5, 2015 at a location from mile 0.5 Ohio River up-bound to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River, extending the entire width of the rivers. According to Table no. 1 to 33 CFR 165.801, the event is to be held during two days the week of July 4th and is to be located at: Ohio River, Mile 0.0-0.5, Allegheny River, Mile 0.0-0.5, and Monongahela River, Mile 0.0-0.5. After full review of the event information and location, the Coast Guard determined that the published annual event differs from the intended dates and location for the event being held this year. A safety zone is necessary. Therefore, to mitigate the potential danger to spectators and participants, the Coast Guard is establishing a temporary safety zone. Any delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in not having the event occur on the dates and in the location proposed by the sponsor and advertised to the public and could potentially interfere with contractual obligations. Completing the full NPRM process would be impracticable. Delaying this rule by completing the full NPRM process would unnecessarily delay the safety zone and be contrary to public interest because the safety zone is needed to protect transiting vessels, spectators, and the personnel involved in the

display from the hazards associated with fireworks displays taking place over the waterway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be unnecessary as this event is a recurring event and mariners familiar with the waterway are aware that the regatta and celebrations related to Independence Day activities occur yearly on this waterway. This year the event will occur over the course of three days, as opposed to the published time period of two days, as per the Federal Register. In addition, the event will take place very near to the published location, approximately 0.1 miles distant from the published location in the Federal Register. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life or property. Also a delay or cancellation of the event in order to allow for publication in the Federal Register is contrary to the public's interest in having this event occur as scheduled. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements, and enforcement times during this temporary situation.

B. Basis and Purpose

This regulation is necessary to ensure the safety of vessels, spectators and participants from hazards associated with and resulting from the 2015 Three Rivers Regatta/Three River Regatta and Fireworks events. Based on the inherent hazards associated with a fireworks show and an on-water regatta event, the COTP Pittsburgh has determined that a fireworks display and a marine regatta pose a significant risk to watercraft, participant safety, spectator safety, public safety and property. The combination of increased numbers of recreational vessels and potential debris falling on passing or anchored spectator vessels has the potential to result in serious injuries or fatalities. This regulation temporarily establishes a zone to restrict vessel movement through and around the location of the regatta and the fireworks display in order to reduce the risks associated with these events.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone for the 2015 Three Rivers Regatta/Three River Regatta and Fireworks from mile

0.5 Ohio River up-bound to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River, extending the entire width of the rivers. This temporary safety zone will be enforced with actual notice from 12:00 p.m. to 10:00 p.m. on July 3-5, 2015, daily. Additionally, prior to the fireworks displays, there will be boat races and therefore, for the safety of those involved in the boat races as well as the general public attempting to transit through this location, a safety zone will be enforced. The public will be informed of the enforcement periods by local notice to mariners. Should there be any subsequent changes or shortening of enforcement periods, the public will be notified via broadcast notice to mariners.

This rule establishing a temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the event.

Deviation from this temporary safety zone is prohibited unless specifically authorized by the COTP Pittsburgh, or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize

our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule is limited in scope and will be in effect for a limited time period. The temporary safety zone will be in effect for ten hours on each of three consecutive days. The Coast Guard expects minimum adverse impact to mariners from the zone's activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Pittsburgh or the designated representative to transit the zone. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 - 612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit from mile 0.5 Ohio River up-bound to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River, extending the entire width of the rivers from 12:00 p.m. to 10:00 p.m. on July 3, 2015 and July 4, 2015 and July 5, 2015. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule is limited in scope, will only be in effect for a limited time period, and notifications to the marine community will be made to those that could be operating in the area during the event. Additionally, waterway users can use the portions of the channel not affected by the safety zone. Deviation from the rule may be requested and

will be considered on a case-by-case basis by the COTP or a designated representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT", section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone from mile 0.5 Ohio River up-bound to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River, extending the entire width of the rivers. This rule is categorically excluded from further review under paragraph 34(g) of figure 2-1 of the Commandant Instruction an environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

Part 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

2. A new temporary § 165.T08-0436 is added to read as follows:

§ 165.T08-0436 Safety Zone; Three Rivers Regatta/Three River Regatta and Fireworks, Ohio River mile 0.5 to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River; Pittsburgh, PA.

(a) Location. The following area is a safety zone: Ohio River mile 0.5 to mile 0.5 on the Allegheny River and mile 0.5 on the Monongahela River.

(b) Effective date. This rule is effective, and will be enforced through actual notice, from July 3, 2015 through July 5, 2015 from 12:00 p.m. through 10:00 p.m., daily.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP Pittsburgh or a designated representative. The COTP Pittsburgh representative may be contacted at 412-221-0807.

(3) All persons and vessels shall comply with the instructions of the COTP Pittsburgh or their designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) Information broadcasts. The COTP Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: June 15, 2015

L. N. Weaver
Commander, U.S. Coast Guard
Captain of the Port

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